

PATENT  
Customer No. 22,852  
Attorney Docket No. 07738.0147-00000

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: )  
Grant E. DUBOIS et al. ) Group Art Unit: 1794  
Application No.: 09/838,809 ) Examiner: Carolyn A. PADEN  
Filed: April 20, 2001 )  
For: NON CALORIC FROZEN ) Confirmation No.: 3526  
CARBONATED BEVERAGE )

**VIA EFS-Web**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

**RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF**

In response to the Notification of Non-compliant Appeal Brief (Notification) dated July 24, 2009, and in support of the Notice of Appeal filed June 3, 2008, Appellant submits an Amended Appeal Brief to correct the alleged deficiencies in the Appeal Brief filed January 5, 2009.

On July 24, 2009, the Office mailed a Notification of Non-compliant Appeal Brief, alleging that the original brief was improper because “[t]he brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number . . .” and further alleging that “[t]he Summary does not point out where in the specification the ‘high potency non-caloric sweetener[’] is found.” *Id.* at 2. Although an entire new brief

“need not, and should not, be filed” when a brief is found defective “solely due to appellant’s failure to provide a summary of the claimed subject matter” (M.P.E.P. § 1205.03(B), 8th ed., Rev. 6 (Sept. 2007)). Appellant submits an Amended Appeal Brief within the time period allotted to correct the minor errors noted by the Office. See Amended Appeal Brief at page 10, line 6 (identifying where in the specification “high-potency non-caloric sweetener” may be found). Additionally, Appellant has added a claim chart solely for the convenience of the Examiner, which can be found on pages 11–15 of the Amended Appeal Brief. No other changes have been presented in this Amended Appeal Brief. Appellant respectfully requests that this Amended Appeal Brief be accepted by the Office and forwarded to the Examiner for preparation of an Examiner’s Answer, for further examination, or for a Notice of Allowance.

The fee required under § 41.20(b)(2) was previously paid with the original Appeal Brief submitted on January 5, 2009. To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Response, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 that are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Date: August 21, 2009

By: \_\_\_\_\_

Alexis N. Fairweather  
Reg. No. 63,686

